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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,338	12/22/2001	Earl David Brock	16,905	2861

23556 7590 03/27/2007
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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	03/27/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/028,338
Filing Date: December 22, 2001
Appellant(s): BROCK ET AL.

MAILED
MAR 27 2007
GROUP 3700

David Arteman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 14, 2006 appealing from the Office action mailed February 23, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulis (US 4,738,678), in view of Klofta et al. (US 2003/0077307 and further in view of Blieszner et al. (US 5,648,083).

With respect to claim 1, Paulis discloses an absorbent article used in conjunction with a wet wipe as set forth in the abstract and in the figures.

The difference between Paulis and claim 1 is provision that the article include a skin care composition and that the wet wipe include a skin care solution.

Klofta et al. (hereinafter “Klofta”) teaches a system for improving skin health of a wearer comprising a disposable absorbent article that includes an outer cover, liquid permeable bodyside liner that defines a bodyfacing surface and that is connected in superposed relation to the outer cover and an absorbent body that is located between the bodyside liner and the outer cover (page 8, paragraph 89) and a skin care composition on at least a portion of the bodyfacing surface of the bodyside liner that includes from about 40 to about 95 percent by weight of emollient (page 2, paragraph 26; page 3 paragraph 32) and from about 5 to about 60 percent by weight of viscosity enhancer (page 5, paragraph 56). Klofta teaches the composition to be usable with various types of absorbent articles as set forth on page 8, [0086].

Blieszner et al. (hereinafter “Blieszner”) teaches a wet wipe meeting the claimed limitations as set forth in col. 2, lines 1 – 7; col. 4, lines 30 – 36 and col. 9, lines 57 – 64.

Art Unit: 3761

It would have been obvious to one of ordinary skill in the art to modify the topsheet of Paulis to provide a skin care composition because the skin care composition is useful for protecting the skin as taught by Klofta in the abstract.

It also would have been obvious to one of ordinary skill in the art to modify the wipe of Paulis to provide a skin care solution because the skin care solution provides effective protection against perineal dermatitis as taught by Blieszner in col. 1, lines 1 – 35.

Likewise, the examiner notes that Paulis provides the general knowledge in the art of providing a diaper that is used in conjunction with a wet wipe. The substitution of these essential working parts in order to provide the most effective product is within the level of ordinary skill in the art.

With respect to claims 2 – 5, the examiner contends that Paulis in view of Klofta and further in view of Blieszner et al. disclose the claimed invention. The preference of applying the wipe before or after use of the article and/or using the combination once or more than once a day is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art because the prior art is fully capable of performing the claimed limitations.

With reference to claim 6, Klofta discloses an emollient selected from the listed group as set forth on page 3, paragraph 34.

As to claim 7, Klofta discloses the claimed viscosity enhancer on page 6, paragraph 61.

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Regarding claims 8 – 9, Klofta discloses from about 5 to about 55% of beeswax as set forth on page 5, paragraph 56 and page 6, paragraph 61.

As to claims 10 and 11, Klofta discloses from about 0.1 – 55 percent of coconut oil as set forth on page 3, paragraph 32 and page 4, paragraph 42.

With reference to claims 12 – 13, Klofta discloses from about 0.1 to about 10 percent of cholesterol as set forth on page 3, paragraph 32 and page 4, paragraph 44.

As to claim 14, Klofta discloses a skin care solution with a HLB range of from about 7 to about 18 as set forth on page 7, paragraph 76.

As to claim 15, Klofta discloses a surfactant selected from the listed group as set forth on page 4, paragraph 37.

With reference to claim 16, Blieszner teaches the extracted botanical active as green tea in col. 9, lines 57 – 64.

As to claims 17 and 18, Klofta discloses from about 0.1 – 55 percent of coconut oil as set forth on page 3, paragraph 32 and page 4, paragraph 42.

With reference to claims 19 – 20, Klofta discloses from about 0.1 to about 10 percent of soy sterols as set forth on page 3, paragraph 32 and page 4, paragraph 44.

Regarding claims 21 – 22, Klofta discloses from about 0.1 to about 30 percent of glucose as set forth on page 3, paragraph 36.

As to claim 23, see the rejection of claim 1.

(10) Response to Argument

The applicant initially argues that the claimed invention demonstrates skin-care excipients having non-aqueous properties (page 4, last paragraph of Appeal Brief). The

examiner contends that these arguments are not commensurate with the scope of the claims, at least with respect to claim 1. Claim 1 recites an emollient and a viscosity enhancer. Neither element is exclusively non-aqueous.

In response to applicant's argument (page 5, 1st paragraph of Appeal Brief) that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., leverages of chemistries associated with each medium of the system) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Paulis is concerned with providing an efficient and compact absorbent system including a topsheet with a readily available cleaning device (col. 3, lines 18 – 22). The cleaning device functions to protect the skin in that the device removes additional bodily fluids and waste from the skin and these materials no longer sit on the skin and potentially cause undesirable skin irritations.

Similarly, Klofta provides a system that protects the skin by providing the article with a protective barrier that protects the skin against fluids, body exudates and other irritants to minimize abrasions between the skin and articles worn adjacent to the skin as set forth on page 1, [0001].

One of ordinary skill in the art would be motivated to substitute the topsheet of Paulis with the topsheet of Klofta in order to enhance the skin protection benefit. Both inventions are concerned with protecting the skin from body exudates and fluids which would minimize abrasions and prevent undesirable rashes and/or chafing, and the topsheet of Klofta provides an added benefit to the cleansing device already disclosed by Paulis.

Likewise, Blieszner provides an article that provides personal cleansing to protect against skin irritations as set forth in the abstract and in col. 1, lines 8 – 12.

Paulis discloses the general knowledge of providing a system that includes an absorbent article used in conjunction with a wet wipe that ultimately improves skin health of a wearer. Wet wipes are well known in the art to encompass a solution, hence the name “wet” wipe. The examiner contends that it would have been obvious to one of ordinary skill in the art to modify elements that have already been disclosed by Paulis (i.e. a topsheet, a solution on the wet wipe, etc.) in order to determine the most effective product or in order to construct a desired product. All of the references are concerned with providing a system that will protect the skin of a user, which includes an absorbent product.

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Contrary to the applicant's assertion, the examiner maintains that Paulis does teach a wipe with a skin care solution. The wipe of Paulis is premoistened and intended to cleanse (col. 1, lines 5 – 10), therefore, whatever composition is used to pre-moisten the wipe may be considered a skin care solution.

The applicant argues that the references do not teach a "complete, synergistic system", and while a "complete synergistic system" is not claimed, the examiner maintains that the references alone, or in combination, teach a system for improving the skin health of a wearer.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

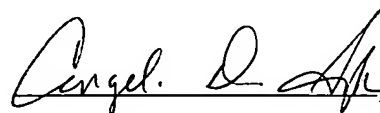
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